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Heather Stevens

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH COLE PRODUCTIONS (LIC), INC. and	X
KENNETH COLE PRODUCTION, INC.	:
Plaintiff,	:
v.	:
REACTION and MATTHEW CHO,	:
Defendant.	:
PROPOSED	

Case No. 08-cv-5218-AKH
ECF CASE
<u>JURY TRIAL DEMANDED</u>
X

CONSENT JUDGMENT, ORDER, AND PERMANENT INJUNCTION

Plaintiffs, Kenneth Cole Productions (LIC), Inc. ("KCPL") and Kenneth Cole Productions, Inc. ("KCP and collectively "Plaintiffs"), having filed and served a Summons and Complaint in the above-captioned action against defendants Reaction and Matthew Cho ("Defendants") on June 6, 2008; and

The named Defendants, together with C&K Clothing Company, shall be referred to collectively as Defendants.

Plaintiffs having served Defendants with the Summons and Complaint on June 11, 2008; and

The parties having agreed to settle their dispute and this action by way of a Consent Judgment, Order, and Permanent Injunction in the form set forth below;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the subject matter; additionally, the Court has specified personal jurisdiction over the parties for the matters at issue in this suit.
2. Judgment on the issue of liability is hereby entered against Defendants, as follows:
 - A. Plaintiffs and their licensees license, manufacture and/or sell a wide variety of high-quality clothing, footwear, luggage, handbags, small leather goods, eyewear, jewelry, fragrances, watches, related goods, and other items (the "Goods").
 - B. The Goods are sold throughout the United States.
 - C. In connection with its Goods and other products, KCPL is the owner of a family of "REACTION" trademarks, including REACTION, RXN, KENNETH COLE REACTION, REACTION KENNETH COLE, KENNETH COLE REACTION RXN, and REACTION KENNETH COLE (Stylized) trademarks (the "Reaction Trademarks") for use in connection with the Goods.
 - D. KCP is, within certain categories of goods, KCPL's exclusive licensee for the Reaction Trademarks.
 - E. KCP and certain of KCPL's licensees have been using the Reaction Trademarks continuously in connection with their products in interstate commerce since at least as early as 1994; as such the Reaction Trademarks are currently in use.

F. In connection with the Reaction Trademarks, KCPL is the owner of the following United States Trademark Registrations (the "Reaction Registrations"):

Trademark	Serial #	Reg. #	IC	Goods
REACTION	75339869	2532363	9	Eyeglasses
REACTION	75339870	2189378	9	Sunglasses
REACTION	75108104	2345847	14, 25	Jewelry and Watches Clothing, namely, men's and women's socks and hosiery; men's neckwear; women's scarves; men's suits, sport-coats, dress slacks, casual slacks, jackets, coats, rainwear, dress shirts, knit shirts, woven sport-shirts, sweaters, denim jeans, underwear; women's suits, blouses, overcoats, rainwear, dress slacks, denim jeans, jackets, sweaters, underwear
REACTION	75156743	2248481	25	Footwear
REACTION	75941836	2602004	35	Retail store services featuring footwear, wearing apparel; luggage, handbags, small leather goods, business cases; eyewear; jewelry and watches; belts, scarves and neckwear; fragrances; accessories
REACTION	75450061	2666727	18	All purpose athletic bags, all purpose sport bags, attaché cases, briefcase-type cases, business card cases, calling card cases, credit card cases, document cases, key cases, overnight cases, toiletry cases sold empty, backpacks, baby backpacks, fanny packs, wrist packs, beach bags, book bags, school book bags, carry-on bags, clutch bags, diaper bags, duffel bags, leather shopping bags, mesh shopping bags, overnight bags,

Trademark	Serial #	Reg. #	IC	Goods
				shoulder bags, textile shopping bags, tote bags, handbags, straps for handbags, travel bags, garment bags for travel, change purses, clutch purses, coin purses, key cases, key fobs (leather), knapsacks, luggage, straps of luggage and suitcases
KENNETH COLE REACTION	78741595	3220801	14	Jewelry, clocks and watches, watch straps and bracelets, key rings of precious metal, money clips of precious metal; wall clocks, table clocks, alarm clocks, clocks incorporating radios; decorative items for the home made of precious metal or coated therewith, namely, bowls, platters, serving trays, chargers, jugs, plates, mugs, vases, cache pots, ice buckets, canisters, pencil cups, letter openers, desk trays, serving trays, decorative trays, candlesticks, candelabras, candle holders, candle rings, candle snuffers, candle trays, decorative boxes, jewelry boxes, jewelry cascs, picture frames, decorative stands, decorative pedestals, cigarette cases, cigarette boxes, cigarette holders, cigarette lighters, ashtrays, nutcrackers, coffee pots, coffee services, tea pots, tea services, tea balls, tea infusers, serviette rings, napkin rings; works of art made of precious metal or coated therewith, namely, busts, figurines, statues, statuettes, sculpture
KENNETH COLE REACTION	75976921	2154344	9	Sunglasses
KENNETH	75975998	2068076	18	Handbags, tote bags, clutch bags,

Trademark	Serial #	Reg. #	IC	Goods
COLE REACTION				luggage, travelling bags, wallets, purses, coin purses, key cases, credit card cases and business card cases
KENNETH COLE REACTION	74479246	1991610	25	Footwear
KENNETH COLE REACTION	75977562	2186930	25	Clothing, namely, men's and women's socks and hosiery; men's neckwear; women's scarves; men's suits, sport-coats, dress slacks, casual slacks, jackets, coats, rainwear, dress shirts, knit shirts, woven sport-shirts, sweaters, denim jeans, underwear; women's suits, blouses, overcoats, rainwear, dress slacks, denim jeans, jackets, sweaters, underwear
KENNETH COLE REACTION	75100283	2237071	9	Eyeglasses
KENNETH COLE REACTION	75426573	2698003	35	Retail store services in the fields of footwear, wearing apparel, bags, accessories and related items
REACTION KENNETH COLE (STYLIZED)	75599230	2594660	35	Retail store services featuring footwear, wearing apparel; luggage, handbags, small leather goods, business cases; eyewear; jewelry and watches; belts, scarves and neckwear; fragrances; accessories
REACTION KENNETH COLE (STYLIZED)	75978961	2362439	3, 25	Cosmetics; skin soap; bath gel; bath salts; shampoo; non-medicated hair preparations; shaving cream, shaving balm; skin lotion; face powder; deodorants and antiperspirants; fragrances, namely, perfumes, colognes and toilet water Coats, jackets, overcoats, rainwear

Trademark	Serial #	Reg. #	IC	Goods
				and topcoats, suits, blazers, shirts, slacks, dresses, sweaters, jeans, t-shirts, sweatshirts, swim wear, shorts; underwear, loungewear, lingerie, robes and pajamas; neckwear, scarves, gloves, mittens, headwear, belts; footwear, socks and hosiery

- G. Fifteen (15) of the Reaction Registrations are incontestable pursuant to 15 U.S.C. § 1065.
- H. Defendants' use of the "REACTON" and "RXN" trademarks (the "Infringing Marks"), on or in connection with the name of Defendants' business (the "Infringing Services") and/or Defendants' clothing and related products (the "Infringing Goods") infringes Plaintiffs' Trademark Registrations, in violation of Lanham Act §§ 32, 15 U.S.C. § 1114.
- I. Defendants' use of the Infringing Marks on or in connection with the name of the Infringing Services and/or the Infringing Goods infringes Plaintiffs' Trademarks, falsely designates the origin of the Infringing Goods and Services, falsely describes such goods and unfairly competes with Plaintiffs, all in violation of Lanham Act § 43(a), 15 U.S.C. § 1125.
- J. Plaintiffs' Trademarks are famous and Defendants' conduct serves to dilute Plaintiffs' famous Trademarks, in violation of Lanham Act § 43(c), 15 U.S.C. § 1125(c).

- K. Defendants' infringement and dilution of Plaintiffs' Trademarks were willful.
 - L. Defendants' conduct violates the provisions of New York Gen. Bus. Law § 368-d, 349 and 133 and constitutes trademark infringement and unfair competition under the common law of the State of New York.
3. Defendants and their agents, officers, directors, servants, employees, their successors and assignees, and all others in active concert or participation with Defendants, including C&K Clothing Company and resellers and retailers of Defendants' Infringing Goods are immediately and permanently enjoined from directly or indirectly:
- A. Using Plaintiffs' Trademarks, the Infringing Trademarks, or any other marks or dresses which are similar to or are colorable imitations of Plaintiffs' Trademarks, alone or as a part of or together with any other designs, word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design, in connection with the sale, offering for sale, advertising, exhibiting at trade or similar shows, distributing or promoting of Goods, all products related to the Goods, and/or any business engaged in the manufacture, importation, distribution, offer for sale, advertisement, promotion, and/or sale of Goods;

- B. Representing by words or conduct that Defendants' Infringing Goods and/or Infringing Services are authorized, sponsored, endorsed by, or otherwise connected with Plaintiffs;
 - C. Committing any act which, in and of itself, or from the manner or under the circumstances in which it is done, amounts to false designation of origin, false description or false representation of Defendants' Infringing Goods and/or Infringing Services, whereby wholesalers, retailers and/or consumers of such products are deceived into believing that Defendants' Infringing Goods and/or Infringing Services, or related goods or services, emanate from Plaintiffs, or from a company that is sponsored, authorized, or endorsed by or connected with Plaintiffs;
 - D. Taking any action which is likely to put others in a position to sell or palm off the Defendants' Infringing Goods as the goods of Plaintiffs or to unfairly compete with Plaintiffs; and
 - E. Otherwise unfairly competing with Plaintiffs or committing infringement of Plaintiffs' rights.
4. Defendants are further Ordered to:
- A. Immediately deliver to Plaintiffs, under oath and for destruction, all clothing, labels, packaging, wrappers, receptacles, containers, advertisements, promotional materials, printing devices, molds, business

forms, catalogs, price sheets and/or all of the things in the possession, custody, or control of Defendants, which are or can be used to create and/or display the Infringing Marks and/or any name, mark or dress which is similar to and/or a colorable imitation of Plaintiffs' Trademarks, alone or together with any other suffix, prefix, word or words, trademark, service mark, trade name, trade dress or other business or commercial designation or any logo, symbol or design in connection with the manufacture, distribution, sale, offer for sale, advertisement or promotion of Defendants' clothing products and/or any clothing or footwear products related thereto;

- B. Pursuant to 15 U.S.C. §1116(a), file with the Court and serve on Plaintiffs, within thirty (30) days after the service on Defendants of this Consent Judgment, Order, and Permanent Injunction a report in writing and under oath, setting forth in detail the manner and form in which Defendants have complied with the injunction;

- C. Pay to Plaintiffs twelve thousand five hundred dollars (\$12,500), in the following manner:

\$2,500 upon or before execution by the parties, and \$2,500 on or before the first of each month, commencing with a payment on or before September 1, 2008 and concluding with a payment on or before December

I, 2008. If Defendants fail to timely make any of the payments required by Consent Judgment, all remaining money owed shall become immediately due and owing.

- D. Immediately notify each of their past and present commercial associates, suppliers and customers, including manufacturers, wholesalers, and retailers, of this Consent Judgment, Order, and Permanent Injunction; and provide Defendants with copies of such notifications; and
 - E. Immediately provide Plaintiffs with an accounting of all commercial associates, suppliers and customers, including manufacturers, wholesalers, and retailers, to whom products bearing the Reaction Trademarks were sold or who otherwise played any role whatsoever in such products, including quantities, dates of sale, and contact details.
5. Provided Defendants faithfully adhere to each of the provisions of this Consent Decree, Plaintiffs have agreed to forego any monetary compensation for past acts of infringement other than that which is required by Paragraph 4 (c). However, in the event that Defendants do not faithfully adhere to each of the provisions of this Consent Decree, Defendants acknowledge that Plaintiffs are entitled to additional monetary compensation, including (without limitation) for acts of infringement occurring prior to the date of this Consent Decree. Moreover, in the event that it becomes necessary for Plaintiffs to enforce the terms of this Consent Decree,

FROD1 :CHO

FAX NO. :12133851959

Aug. 04 2008 12:34PM Pl

Defendants agree and acknowledge that they shall be jointly responsible for all costs and fees (including, without limitation, reasonable compensation for the time of Plaintiffs' employees and attorneys fees) incurred by Plaintiffs in enforcing this Consent Decree, in addition to any other damages to which Plaintiffs may be entitled pursuant to applicable law.

6. This Court shall retain jurisdiction of this action for the purpose of enabling Plaintiffs to apply to the Court, at any time, for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance, therewith and for the punishment of any violations thereof.

Kenneth Cole Productions (LIC), Inc.

By: Maria Premini

Dated: 8/4/2008

Reaction

By:

Dated: 8/3/2008

Kenneth Cole Productions, Inc.

By: _____

Dated: _____

Matthew Cho

Dated: 8/3/2008

SO ORDERED:
August 2008

Alvin K. Hellerstein, U.S.D.J.

FROM :CHO

FAX NO. :12133851959

Aug. 04 2008 12:34AM P1

Defendants agree and acknowledge that they shall be jointly responsible for all costs and fees (including, without limitation, reasonable compensation for the time of Plaintiffs' employees and attorneys fees) incurred by Plaintiffs in enforcing this Consent Decree, in addition to any other damages to which Plaintiffs may be entitled pursuant to applicable law.

6. This Court shall retain jurisdiction of this action for the purpose of enabling Plaintiffs to apply to the Court, at any time, for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance, therewith and for the punishment of any violations thereof.

Kenneth Cole Productions (LIC), Inc.

By: _____

Dated: _____

Reaction

By: _____

Dated: 8/3/2008

Kenneth Cole Productions, Inc.

By: David P. Eden

Dated: 8-4-08

Matthew Cho

Dated: 8/3/2008

SO ORDERED:
August 5 2008

Alvin K. Hellerstein, U.S.D.J.

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

Date:

In Re:

-v-

Case #: ()

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

J. Michael McMahon, Clerk of Court

by: _____

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

X

-v-

NOTICE OF APPEAL

civ.

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X

Notice is hereby given that _____
(party)
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the _____ day of _____, _____.
(day) (month) (year)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____
(Telephone Number)

Note: You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213

X

MOTION FOR EXTENSION OF TIME
TO FILE A NOTICE OF APPEAL

-V-

civ.

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X

Pursuant to Fed. R. App. P. 4(a)(5), _____ respectfully
(party)
requests leave to file the within notice of appeal out of time. _____
(party)
desires to appeal the judgment in this action entered on _____ but failed to file a
(day)
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

(Signature)

(Address)

(City, State and Zip Code)

Date: _____

() _____ - _____
(Telephone Number)

Note: You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

FORM 2

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

X

-v-

**NOTICE OF APPEAL
AND
MOTION FOR EXTENSION OF TIME**

civ.

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X

1. Notice is hereby given that _____ hereby appeals to
 (party)
 the United States Court of Appeals for the Second Circuit from the judgment entered on _____
 [Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time
 respectfully requests the court to grant an extension of time in
 (party)
 accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, _____ states that
 (party)
 this Court's judgment was received on _____ and that this form was mailed to the
 (date)
 court on _____
 (date)

(Signature)

(Address)

(City, State and Zip Code)

Date: _____ () _____
 (Telephone Number)

Note: You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 3

**United States District Court
Southern District of New York
Office of the Clerk
U.S. Courthouse
500 Pearl Street, New York, N.Y. 10007-1213**

X

AFFIRMATION OF SERVICE

-V-

civ.

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X

I, _____, declare under penalty of perjury that I have

served a copy of the attached _____

upon _____

whose address is: _____

Date: _____
New York, New York

(Signature)

(Address)

(City, State and Zip Code)